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2                   UNITED STATES DISTRICT COURT FOR THE  
3                   NORTHERN DISTRICT OF OHIO

4                   SOCAL POWERSPORTS INC.,

Case No.:

5                   Plaintiff,

6                   vs.

**COMPLAINT**

7                   THE TIMKEN COMPANY, and

8                   SHANE SMITH

9  
10                  Defendants

11                 1. Plaintiff SoCal Powersports Inc. (“Plaintiff”), by and through its  
12                 counsel, for its Complaint against Defendants The Timken Company (“Timken”)  
13                 and its agent, Shane Smith, alleges as follows:

14  
15                 **INTRODUCTION**

16  
17                 2. This is not a case of infringement from unauthorized use of a  
18                 trademark.

19  
20                 3. This is a case of a company (Timken) that bought a brand then  
21                 changed its name slightly and filed infringement reports against sellers of the  
22                 existing inventory that still had the name of a prior owner.

23  
24                 4. The product, a belt used in motors, had been offered for sale on  
25                 <amazon.com> (“Amazon”) for many years under the ULTIMAX brand name.

1       5. After purchasing the brand name, Defendant The Timken Company  
2 (“Timken”) hired a seller on Amazon, Defendant Shane Smith (“Smith”) who was  
3 willing to file trademark infringement reports on behalf of the brand as its agent  
4 rather than work with the Amazon Catalog Team to update the product listings to  
5 reflect the new owner’s name.  
6

7       6. This is also a case of a company that decided to change its policies  
8 regarding online sales of its products, announced that policy change two days later  
9 to known sellers of its products (like SoCal), and then began a program of driving  
10 sellers off the online marketplaces (like Amazon) to reduce seller competition for  
11 those products online and in retail stores.  
12

13       7. Smith took to the task with gusto, filing some 267 infringement  
14 reports against his competitor, Plaintiff SoCal Powersports Inc. (“SoCal”), in the  
15 span of 2 ½ weeks.  
16

17       8. SoCal was surprised because it always bought its Timken products  
18 from wholesale distributors who were authorized to sell the Timken products to  
19 SoCal for resale. Timken knew this.  
20

21       9. The effect of Smith’s large number of filings in such a short time span  
22 was devastating to SoCal’s business and its Account Health Rating (“AHR”) on  
23 Amazon. Amazon suspended SoCal’s selling privileges for all products and  
24 deactivated its listings. SoCal was out of business and the competition it  
25  
26  
27  
28

represented was removed from Amazon. The goals of both Smith and Timken were achieved.

10. Efforts to appeal the reports and the suspension to Amazon based on product receipts from the wholesalers were unsuccessful as Amazon no longer accepted receipts as proof of authenticity. Amazon needed a retraction of the complaints done only through the same Brand Registry system that was used to file the reports and then only within 180 days from when those reports were filed.

11. When asked to retract the complaints through the Brand Registry system in a timely manner, Timken and Smith refused.

## THE PARTIES

12. Plaintiff SoCal Powersports Inc. is a California corporation with offices in San Marcos, California.

13. Defendant The Timken Company (“Timken”) is a corporation organized under the laws of the state of Ohio and headquartered in North Canton, Ohio.

14. Defendant Shane Smith (“Smith”) is an individual residing at 691 E Daugherty Rd, Neosho, Missouri 64850 with an address for his company, Mass Depot, of 4500 Doniphan Dr Neosho, MO, 64850-9122.

## **JURISDICTION AND VENUE**

15. The Court has subject matter jurisdiction over this action pursuant to the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202; the Trademark Act of 1946, as amended, 15 U.S.C. § 1051 et seq., including 15 U.S.C. § 1121 and § 1125; and 28 U.S.C. §§ 1331, 1338, and 1367.

## BACKGROUND FACTS

16. For many years, Timken made and sold engineered bearings and power transmission products.

17. A company called Dayco used to own the brand ULTIMAX for transmission belts.

18. The Carlisle company then bought the ULTIMAX brand from Dayco.

19. Timken bought the ULTIMAX brand from Carlisle.

20. On September 30, 2021, Timken announced that Carlisle and Dayco branded belts would now be sold under the new name ULTIMAX. (*Exh. 1.*)

21. Timken objected to any advertisement of Ultimax belts using the words “Carlisle” or “Dayco” anywhere including brand field, title, and/or product packaging images even though its own publication referenced the Carlisle product. According to Timken’s publication, “Timken Belts has ISO 9001:2015 certified manufacturing facilities in Springfield, Mo. and Fort Scott, Kan. ‘We make

1 Timken® belts in the same factories and to the same specifications as Carlisle  
2 belts”.

3  
4 22. Existing inventories of ULTIMAX belts in warehouses, common  
5 wholesale distribution channels, and inventory held by Amazon on behalf of  
6 various sellers still have the Dayco and Carlisle names on the labels at the time  
7 Timken filed trademark complaints with Amazon.

8  
9 23. Timken has not recalled these older ULTIMAX products or offered to  
10 replace existing inventories with the newer, Timken-branded ULTIMAX belts.

11  
12 24. On December 17, 2023 Timken notified SoCal by email that Timken  
13 had updated its brand guidelines to include a new policy that prohibited online  
14 sales through third-party websites and a new Minimum Advertised Price (“MAP”)  
15 for those products. The policies announced were retroactively effective as of two  
16 days earlier and promised to “take that into consideration to allow you an  
17 opportunity to update your online content” and made no mention of products that  
18 had been purchased earlier and were already in the retail inventories. (*Exh. 2.*)

19  
20 25. The product listings on Amazon under which SoCal was selling the  
21 Timken products could not, however, be changed or updated by SoCal. The  
22 changes could only be made by Timken or Amazon.  
23  
24  
25

1       26. In the powersports industry, Timken belts are now supplied to  
2 powersports distributors under the Ultimax® brand as premium performance belts  
3 (“the Ultimax Products”).  
4

5       27. Timken is the owner of U.S. Trademark Registration No. 3,167,638  
6 for ULTIMAX on “Land vehicle parts, namely, power transmission and drive  
7 belts” (“the Ultimax Registration”).  
8

9       28. As Timken acknowledged, “Timken belts are supplied to industrial  
10 distributors and original equipment manufacturers who seek the optimum in  
11 quality and service. . .” (*Exh. 1.*)  
12

13       29. SoCal was an authorized distributor of the Carlisle products and  
14 understood that it would continue to be an authorized distributor after the brand  
15 name change.  
16

17       30. In a letter to Amazon dated April 15, 2024, Timken confirmed that  
18 SoCal is an authorized seller of the Ultimax Products. (*Exh. 3.*)  
19

20       31. Plaintiff used to resell the Timken products through an Amazon  
21 storefront until its selling privileges were suspended. Plaintiff no longer sells  
22 Timken products.  
23

24       32. Since its formation, Plaintiff has served hundreds of thousands of  
25 customers through its Amazon storefront.  
26

33. Defendants' illegal actions have irreparably damaged, and threaten to destroy, Plaintiff's successful business.

# THE AMAZON ONLINE MARKETPLACE

34. On information and belief, Amazon is the world's largest online retailer.

35. According to published reports, Amazon is worth more than the next eight largest retailers located in the United States combined. See JP Mangalindan, *Amazon is now worth more than America's 8 largest retailers combined*, *Yahoo Finance* (Jan. 25, 2017), <https://finance.yahoo.com/news/amazon-is-now-worthmore-than-americas-8-largest-retailers-combined-124101625.html>.

36. Amazon's online e-commerce platform allows for third parties, like Plaintiff, to sell products on its e-commerce platform.

37. The privilege of selling on Amazon is highly advantageous, as Amazon provides third parties with exposure to the world marketplace on a scale that no other online retailer can currently provide.

38. For several years, Plaintiff has had a contractual and business relationship with Amazon, such that Plaintiff was and is permitted to sell products on Amazon's e-commerce platform.

39. Third-party sellers, like Plaintiff, create an online storefront on Amazon. When a customer buys a product on Amazon, the customer can see the

1 online store from which the customer is purchasing a product. Thus, Plaintiff has  
2 the online equivalent of a brick-and-mortar store.  
3

4 40. A significant portion of Plaintiff's business is derived from the sale of  
5 products on Amazon and, in particular, through its Amazon storefront.  
6

7 41. Once Plaintiff acquires products from reputable sources, Plaintiff  
8 resells the same products on Amazon at a profit.  
9

10 42. In general, transactions on Plaintiff's Amazon storefront are  
11 completed by SoCal in a process known as "Fulfilled by Merchant" or "FBM" or  
12 by a contractor.  
13

14 43. Plaintiff has invested significant efforts into building a successful and  
15 reputable Amazon storefront.  
16

17 44. Plaintiff's Amazon storefront has amassed over 9,500 reviews and  
18 holds a near-perfect customer rating.  
19  
20  
21  
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23  
24  
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28

## SoCal Powersports



Visit the SoCal Powersports storefront

★★★★★ | 93% positive in the last 12 months



Protected by A-to-z Guarantee The Amazon A-to-z Guarantee protects y

★★★★★ 4.8 out of 5

9,571 ratings

Lifetime ▾

5 star 89%

4 star 7%

3 star 1%

2 star 0%

1 star 2%

45. A small sample of Plaintiff's recent reviews are shown below:

Lifetime [Clear filter](#)

9571 total ratings, 9570 with feedback ⓘ

★★★★★ "quick shipping ,just as advertised, thanks "

By cjhans on March 24, 2024.

★★★★★ "Great seal kit for complete rebuild on an anniversary edition YZF250. Arrived a little earlier than expected "

By Daniel G. on March 24, 2024.

★★★★★ "Quick Fast and as advertised. Great Seller "

By Ben on March 18, 2024.

★★★★★ "as described "

By Eduardo La Riva on March 12, 2024.

★★★★★ "Great "

By Stephen on March 4, 2024.

1       46. A seller's feedback rating on Amazon is one of the few indicia that a  
2 buyer has to provide trust that any purchase will be trouble-free. As Amazon  
3 explains how its feedback system works:

4  
5                          Learn more about how seller reviews work on  
6                          Amazon

7                          Seller feedback, including seller star ratings, helps  
8 customers learn more about a seller and the order  
9 experience they can expect if they chose to make a  
10 purchase. To calculate the overall star rating and  
11 percentage breakdown by star, our system considers  
12 a variety of factors. For example, if a negative order  
13 experience is the fault of Amazon and not the seller,  
14 we remove the rating from the seller's overall star  
rating calculation and strike through the feedback  
text with the statement 'This item was fulfilled by  
Amazon, and we take responsibility for this  
fulfillment experience.' To see all negative reviews,  
regardless of their strike through stat us, you may  
click the star rating bars.

15  
16       47. Any harm that comes to the relationship between Plaintiff and  
17 Amazon creates a potential for serious and irreparable injury to Plaintiff.

18  
19                          **DEFENDANTS' ATTEMPT TO STIFLE COMPETITION BY FILING  
20                          FALSE INTELLECTUAL PROPERTY COMPLAINTS**

21       48. On information and belief, Timken sought to increase its profits by  
22 controlling the distribution and pricing of their products, including the Ultimax  
23 Products, through unlawful means.

24  
25       49. As demonstrated below, Timken used Smith to engage in a  
26 coordinated effort to preclude select third parties from reselling genuine Ultimax

1 Products on Amazon by filing an extraordinary number of false allegations of  
2 intellectual property infringement in a relatively short time frame.  
3

4 50. On information and belief, the purpose of these false complaints and  
5 defamatory statements was to prevent Plaintiff from selling genuine Ultimax  
6 Products on Amazon.  
7

8 51. On information and belief, the purpose of these false complaints was  
9 to damage Plaintiff's reputation with Amazon and harm its accumulated goodwill,  
10 such that Amazon would suspend or terminate its relationship with Plaintiff.  
11

12 52. Because Plaintiff sells only genuine products through its Amazon  
13 storefront, Timken had no legitimate intellectual property claim(s) against SoCal.  
14

15 53. Under the first sale doctrine, Plaintiff is lawfully permitted to re-sell  
16 Ultimax Products without violating the intellectual property rights or other legal  
17 rights of Timken. See, *Brilliance Audio, Inc. v. Haights Cross Commc'ns, Inc.*, 474  
18 F.3d 365, 369 (6th Cir. 2007) ("It is true that trademark law contains a 'first sale'  
19 exception that provides a defense to claims of infringement. Under the exception,  
20 resale by the first purchaser of the original trademarked item is generally neither  
21 trademark infringement nor unfair competition.")  
22  
23

24 54. SoCal resold the Ultimax Products in their original packaging without  
25 changes to the product that might introduce a material difference to those products.  
26  
27

1       55. It is well-known among brand owners and any seller on Amazon that  
2 Amazon has a policy of acting on virtually any notice of intellectual property  
3 infringement, whether legitimate or not.  
4

5       56. As one Amazon expert explained:

6              In order to meet a minimum liability standard, Amazon will act upon  
7 properly submitted and completed notice claims of infringement.  
8 They will notify specified marketplace sellers which party reported  
9 them, on what listing, and how to reach that would-be rights owner  
10 via email. The rest though, is up to you. And, unless you (and possibly  
11 your legal team) can prove that the Notice claim is false, Amazon  
12 considers it valid and actionable.

13              Amazon does not independently investigate whether a filed report is  
14 factually supported before it takes action.

15              Unfortunately, word is out among potential Notice claim abusers that  
16 anyone can submit a form. Amazon [is] not worried about additional  
17 vetting or verification processes. Investigators merely check the form  
18 for completed content in all the right spaces, kill the listings and send  
19 off the notifications.

20              They don't independently verify that any of the information is actually  
21 correct, or valid. The rights owner makes a legally-binding declaration  
22 in the form, and signs it.

23       See Chris McCabe, "False Infringement Claims are Rife on Amazon,"

24       WebRetailer (Apr. 11, 2018) (*Exh. 4 at p. 1*) (emphasis added).

25       57. On information and belief, Timken and its agent Smith were, at all  
26 relevant times, aware of the foregoing Amazon policy with respect to reports of  
27 intellectual property infringement.  
28

1       58. Each complaint submitted to Amazon was signed by a Timken  
2 employee or by Smith as an agent of Timken under penalty of perjury. See  
3 https://www.amazon.com/report/infringement (last visited November 21, 2024):  
4

5              **Are you the Rights Owner or an Agent?**

- 6               Rights Owner  
7               Agent

8              **Are you a seller on Amazon?**

- 9               Yes  
10              No

12       59. For example, when submitting an infringement report to Amazon  
13 (https://www.amazon.com/report/infringement) (last visited November 21, 2024),  
14 the submitter must read and accept the following statements:  
15

16       “By clicking Submit:

17       I have a good faith belief that the content(s) described above violate(s) my  
18 rights described above or those held by the rights owner, and that the use of  
19 such content(s) is contrary to law.

20       I declare, under penalty of perjury, that the information contained in this  
21 notification is correct and accurate and that I am the owner or agent of the  
22 owner of the rights described above.

23       I understand that, if accepted, the information included in this report may be  
24 shared by Amazon with all the reported sellers, with the exception of any  
25 order ID number(s).

26       I understand that submitting false or inaccurate complaints against other  
27 sellers may result in the suspension or termination of my Amazon selling  
28 privileges.”

1  
2       60. On information and belief, the complaints were submitted by Smith as  
3 an agent of Timken under penalty of perjury.  
4

5       61. Timken and its agent Smith committed perjury in the filing of  
6 infringement complaints against SoCal that were known to be false and factually  
7 inaccurate, incomplete, and misleading.  
8

9       62. Committing perjury towards a goal of suppressing competition on  
10 Amazon represents an unfair and improper act.  
11

12       63. On information and belief, Timken and Smith were, at all relevant  
13 times, aware that Amazon will act on reports of trademark infringement, regardless  
14 of the truth of the report.  
15

16       64. On information and belief, Timken and Smith were, at all relevant  
17 times, aware that Amazon will not independently verify that a product is infringing  
18 and that Amazon will rely completely on the complainant's retraction of the filed  
19 reports.  
20

21       65. On information and belief, Timken and Smith were aware that  
22 Amazon does not provide adverse consequences for a complainant who files false  
23 reports under penalty of perjury.  
24

25       66. Defendants filed false complaints with Amazon that alleged that  
26 Plaintiff was selling infringing Ultimax Products and infringed the Ultimax  
27

1 Registration and knew that there would be harm to SoCal's selling privileges if  
2 they refused to timely retract the complaints in the specific manner required by  
3 Amazon.  
4

5 67. Timken and Smith knew, or should have known, that such allegations  
6 were false.  
7

8 68. Defendants' allegations of infringement were objectively  
9 unreasonable sham submissions made in bad faith in an effort to prevent Plaintiff's  
10 resale of genuine Ultimax Products on Amazon's e-commerce platform.  
11

12 69. The harm to SoCal as a consequence of the acts of perjury committed  
13 by Timken and Smith in the Amazon reports was reasonably foreseeable.  
14

15 70. For example, on or about November 30, 2023, Plaintiff received a  
16 notice from Amazon stating as follows:  
17

18 Hello,

19 We are contacting you because we received a report of trademark infringement from the  
20 rights owner listed below. Sellers on Amazon.com are not allowed to create listings or  
detail pages that infringe trademark rights.

21 We removed the content listed at the end of this email. We may let you list this content  
22 again if we receive a retraction from the rights owner. Their contact information can be  
found below.

23 shane  
[shane@massdepot.com](mailto:shane@massdepot.com)

24 How do I reactivate my listing?  
25 Please visit the Account Health page in Seller Central  
([https://sellercentral.amazon.com/performance/dashboard?ref=ah\\_em\\_nr](https://sellercentral.amazon.com/performance/dashboard?ref=ah_em_nr)) to appeal this  
26 listing deactivation. Please click on the "Appeal" link next to the listing in the "Product and  
Policy Violations" section on the account health page.  
27

If the rights owner does not retract their complaint, or you do not provide supporting information, we may provide your contact information to the rights owner upon their request.

We consider intellectual property infringements a serious matter, and your account is under review. If we receive more complaints about your listings, we may not allow you to sell on Amazon.com.

ASIN: B003YI3GY2

Title: Ultimax 22-140-4748U4 Ultimax Pro Drive Belt

Infringement type: Trademark

Trademark: 3167638

Complaint ID: 14399857811

Sincerely,

Seller Performance Team

<https://www.amazon.com>

Amazon.com

71. The above report relates to an Ultimax Product, which is referenced

by its Amazon Standard Identification Numbers (“ASIN”).

72. The Ultimax Product identified in the above report was genuine.

73. In comments submitted with a complaint, Smith asserted on behalf of

Timken that “A brand called ‘Carlisle’ is using our Ultimax trademark on the packaging” knowing that there are still belts in circulation in established

distribution channels that have the Carlisle name on the label and that Carlisle was the previous brand owner of the ULTIMAX mark.

74. In making this assertion, Smith and Timken were purposefully

deceptive and misleading.

75. SoCal bought all of its Ultimax/Carlisle products from authorized

distributors, e.g., Parts Unlimited in Janesville, WI and Automatic Distributors of

1 Bangor, Maine. Minimal effort would have been required to verify the source of  
2 SoCal's products, e.g., an email to your distributors asking if anyone had sold  
3 Ultimax/Carlisle products to SoCal. Indeed, Ultimax later acknowledged that  
4 SoCal is an authorized reseller of the Ultimax products. (See the listing of affected  
5 ASINs in *Exh. 3.*)  
6  
7

8 76. The Ultimax Product identified in the above report was made and sold  
9 by, or under the direction of Timken.  
10

11 77. On information and belief, prior to filing the above report, Timken  
12 and Smith knew, or should have known, that the Ultimax Product sold by Plaintiff  
13 was not infringing.  
14

15 78. On information and belief, prior to filing the above report, Defendants  
16 knew, or should have known, that the Ultimax Product sold by Plaintiff did not  
17 infringe the above cited Ultimax Registration.  
18

19 79. On information and belief, Defendants' allegation that the above  
20 Ultimax Product was infringing was knowingly false and made in bad faith.  
21

22 80. In total, Defendants filed at least 267 reports with Amazon in the  
23 period between November 30, 2023 and December 17, 2023 alleging that SoCal  
24 was selling infringing Ultimax products. (*Exh. 5.*)  
25  
26  
27  
28

1       81. On information and belief, prior to filing the above reports,  
2 Defendants knew, or should have known, that the Ultimax Products sold by  
3 Plaintiff did not infringe the above cited Ultimax Registration.  
4

5       82. Each of the filed reports was false and calculated to mislead Amazon  
6 so as to induce Amazon to act against SoCal under false pretenses.  
7

8       83. Defendants Timken and Smith filed false infringement complaints  
9 against SoCal when Defendants know SoCal was selling products under authorized  
10 product detail pages under the control of Timken.  
11

12       84. As a registered brand owner, Timken should have modified the  
13 Amazon listings to reflect the new brand name. The product catalog on  
14 Amazon.com is owned by Amazon.com and only Amazon.com or the registered  
15 brand owner (if registered) can make catalog modifications.  
16

17       85. Plaintiff did not have the ability to modify the product details of the  
18 Amazon listings for the Carlisle/Ultimax products.  
19

20       86. When challenged about the complaints, Defendants refused to rescind  
21 or retract the complaints.  
22

## **HARM TO PLAINTIFF**

87. As a result of the above false rights complaints, Plaintiff's listings relating to Ultimax Products were suspended, resulting in an immediate loss of revenue.

88. It is well known that complaints to Amazon put Amazon sellers in jeopardy of a full selling suspension, meaning that Plaintiff's ability to sell any and all products on Amazon would be lost.

89. On information and belief, Defendants were aware that complaints to Amazon, particularly those alleging trademark infringement, result in seller suspensions.

90. On information and belief, Defendants have used these same tactics, namely filing false infringement complaints, against other Amazon sellers.

91. Here, Amazon alerted Plaintiff that its selling account would be suspended as a result of Defendants' false complaints.

92. At no time has Plaintiff ever sold Ultimax Products that infringed any of Defendants' intellectual property or other legal rights.

93. The Ultimax Products sold by Plaintiff were, at all times, authentic products bearing the name of the manufacturer, and were otherwise, at all times, sold lawfully

1       94. Defendants knowingly made false intellectual property rights  
2 complaints against Plaintiff.  
3

4       95. On information and belief, the true purpose of these complaints was to  
5 ensure the suspension of Plaintiff's marketplace listings, control pricing, and  
6 eliminate fair competition.  
7

8       96. Smith is a direct competitor to SoCal on Amazon.  
9

10      97. As result of Defendants' false complaints, Plaintiff's performance  
11 metrics were irreparably damaged.  
12

13      98. It is well-known that as much as 90% of all Amazon sales occur from  
14 Amazon's "buy box," a section of an Amazon product detail page where customers  
15 can add a product to their cart.  
16

17      99. Amazon determines which seller gets the "buy box" based on a  
18 number of factors, including the seller's performance metrics.  
19

20      100. Defendants' false complaints have damaged Plaintiff's metrics and  
21 caused Plaintiff to lose the "buy box" on many of its product listings.  
22

23      101. Plaintiff's selling privileges on Amazon were suspended in February  
24 2024. This suspension meant that Plaintiff's business as to all products, including  
25 the Ultimax products, were shut down.  
26  
27  
28

1       102. With the help of an expensive consultant and countless hours of  
2 painstaking work, Plaintiff was able to get its Amazon account reactivated in  
3 August 2024.  
4

5       103. The complaints filed by Timken did damage to Plaintiff's seller  
6 account beyond the scope of the typical, isolated, complaint.  
7

8       The Account Health Rating Measures Reputation on Amazon  
9

10      104. The operation of Amazon's Account Health Rating ("AHR") for  
11 sellers is important to Plaintiff's claims herein.

12      105. All sellers start with 200 points. The maximum that can be attained is  
13 1000 points. An AHR under 100 is grounds for deactivation.  
14

15      106. Each of these complaints filed by Timken carried a weight of -16  
16 points that are subtracted from the AHR as a high impact repeat violation.  
17

18      107. For every 200 orders within 180 days, sellers gain +4 points.

19      108. The actions of Timken and Smith have caused harm to Plaintiff's  
20 AHR by a reduction of 3424 points impact which dropped Plaintiff's AHR score  
21 with Amazon to well below 0. That impact to the AHR score is why Plaintiff's  
22 account was deactivated.  
23

24      109. When an account is deactivated, a seller must successfully appeal the  
25 violations to be reinstated. They do not drop off the seller's account after 180 days  
26 like they would for an active seller.  
27  
28

1       110. Because Timken did not properly retract the complaints through its  
2 Brand Registry account, Plaintiff no longer had the countervailing benefits of its  
3 orders towards restoring its original AHR.

5       111. The damage to Plaintiff's AHR due to the filings by Timken is a  
6 reputational harm that cannot be effectively recovered from absent judicial action.  
7

8       112. Every day Timken refused to retract the complaints moved Plaintiff  
9 further away from being able to be reinstated without significant intervention by  
10 Amazon leadership.

12       113. Because of these complaints filed by Timken, Plaintiff no longer has  
13 the benefit of the positive impact on SoCal's Amazon Account Health Rating  
14 ("AHR") that that its order count would have provided, nor does Plaintiff have the  
15 benefit of the typical Amazon practice that violations over 180 days are not  
16 construed against the account.  
17

19       114. Between 8/24/2023 – 2/20/2024 (180 days to date of deactivation),  
20 SoCal's order count was 15,587 with an average order total of \$75. According to  
21 the published AHR calculation of 4 AHR points per 200 orders, Plaintiff's 180-day  
22 orders would be worth 311 AHR points. Including the 200 point baseline given to  
23 all sellers, Plaintiff's had +511 AHR points in their favor before Defendants  
24 targeted SoCal with infringement reports.  
25

1       115. Each of the complaints filed by Timken carried a weight of -16.

2       Defendants' actions caused a drop of -3424 points in SoCal's AHR rating.

3  
4       116. Defendants' actions have resulted in harms to SoCal that include  
5 account deactivation, loss of product sales during the period of deactivation,  
6 diminished sales after reactivation due to the damage to its AHR rating, a loss of  
7 trust by Amazon's leadership, and a continuing low score that precludes SoCal's  
8 ability to get the Buy Box for its product offerings. The scale of the damage is  
9 effectively unrecoverable.

10  
11       117. On information and belief, Smith intentionally misused the Brand  
12 Registry tool to file an inordinate number of trademark infringement reports with  
13 Amazon that it would foreseeably result in the suspension of SoCal's selling  
14 privileges and a continuing harm to its ability to sell products on Amazon.

15  
16       118. All the product detail pages referenced in Timken's reports were  
17 created years ago before the CARLISLE brand was rebranded to ULTIMAX.

18  
19       119. Timken had other ways to correct the listings on Amazon for the  
20 rebranded CARLISLE products that would not have harmed Plaintiff like the  
21 conduct it chose to use.

22  
23       120. Plaintiff has received no complaints from Ultimax or from Amazon  
24 customers regarding inauthentic items.

1       121. During this time, Plaintiff filed appeals to Amazon and included  
2 invoice receipts showing authenticity of the Ultimax Products it was selling.  
3  
4 Substantially all (90%) of such appeals were rejected.

5       122. Ultimately, Plaintiff sought a letter of authorization from Timken.

6       123. Timken rejected these requests multiple times.

7  
8       124. SoCal was instructed by AHS to ask Timken to revise the letter  
9 repeatedly to include more details about SoCal's seller account and the type of  
10 intellectual property SoCal was authorized to use. This only resulted in the letter  
11 being rejected because it appeared "altered" or "inauthentic".  
12

13       125. The letter was not altered and it is authentic.

14  
15       126. The sheer number of complaints directly resulted in the deactivation  
16 of SoCal's selling privileges shortly thereafter as to any product.  
17

18       127. The complaints were false and unjustified.

19  
20       128. When SoCal asked Defendants to retract the complaints correctly  
21 through the Timken Amazon brand registry account, they refused.

22       129. It is now too late to retract the complaints using the Brand Registry.

23  
24       130. By its actions, Timken caused irreparable damage to SoCal's Amazon  
25 seller account that continues to harm SoCal.

26  
27       131. SoCal's account was deactivated as a direct and proximate result of  
28 the actions of Defendants.

132. All of SoCal's offers for Ultimax products remain deactivated.

133. SoCal's business lost some \$2.4 million in sales during the period its account deactivated as to the sale of any products, including the Ultimax products.

134. SoCal continues to suffer the effects of the attack on its reputation, sales, and damage to its AHR with Amazon.

**COUNT I - DECLARATORY JUDGMENT  
(No Trademark Infringement – As to Timken)**

135. Plaintiff realleges and incorporates previous allegations in paragraphs  
1-124.

136. Defendant Timken manufactures and distributes ULTIMAX Products and place such products into the stream of commerce.

137. Timken is the owner of the ULTIMAX Registration.

138. Shane Smith of Mass Depot acted as an agent of Timken when filing infringement complaints against Plaintiff in late 2023.

139. Plaintiff stocked and resold new, genuine Ultimax Products, each bearing a true mark via online sales channels

140. Defendants have submitted one or more complaints to Amazon that state that Plaintiff sold infringing Ultimax Products.

1       141. Specifically, on behalf of Timken, Shane Smith submitted false  
2 intellectual property infringement reports to Amazon and signed each report under  
3 penalty of perjury.  
4

5       142. These reports specifically targeted Plaintiff.  
6

7       143. The reports to Amazon by Smith were authorized by and filed on  
8 behalf of Timken to interfere improperly with Plaintiff's ability to sell Ultimax  
9 Products on Amazon.  
10

11       144. Defendants have submitted at least 267 complaints to Amazon  
12 representing that Plaintiff sold Ultimax Products that infringed, inter alia, the  
13 Ultimax Registrations.  
14

15       145. The Ultimax Products sold by Plaintiff were genuine and in their  
16 original packaging.  
17

18       146. The complaints by Defendants caused the suspension of Plaintiff's  
19 selling privileges as to all products that Plaintiff offered, including the Ultimax  
20 Products.  
21

22       147. Defendants' complaints put Plaintiff in jeopardy of permanent  
23 suspension of all selling privileges, which will cause extraordinary, irreparable,  
24 and untold damage on a business that is in the virtually exclusive business of  
25 selling products on e-commerce platforms.  
26  
27

148. Under these facts, an actual controversy exists between Plaintiff and Defendant Timken.

149. Plaintiff is entitled to a declaratory judgment that it has not violated Timken's trademark rights or other rights, whether under Federal or State law.

**COUNT II – DEFAMATION**  
**(Ohio Revised Code §§ 2323.01, 2739 *et seq.*)**

150. Plaintiff realleges and incorporates previous paragraphs 1-124.

151. Defendants published false statements to Amazon regarding Plaintiff as described in this Complaint, including reporting to Amazon that Plaintiff's Ultimax Products infringed the Ultimax Registrations.

152. Plaintiff did not infringe the Ultimax Registration.

153. Defendants' false statements were injurious to Plaintiff's business reputation and its business because the mere filing of so many infringement reports in a short period of time, regardless of their merits, have been counted against Plaintiff's Account Health Rating (AHR) with Amazon. Plaintiff's complaints directly caused Plaintiff's AHR to fall so low that Amazon suspended Plaintiff's selling privileges related to all products, including the Ultimax Products.

154. Even though its selling privileges have been restored as to many products, the volume of Timken's reports have not been withdrawn or purged

1 from the Amazon AHR system and continue to harm Plaintiff's business in the  
2 form of a significantly diminished ability to gain the premium "Buy Box" position  
3 for its remaining listings, reduced credibility with Amazon's account services  
4 team, and reduced willingness to give Plaintiff the benefits of any doubt in issues  
5 that arise in the normal course of business on Amazon. In short, Timken's report  
6 volume has caused Amazon to label Plaintiff as a bad actor regardless of the truth.  
7  
8

9 155. On information and belief, Defendants were, at a minimum, negligent  
10 in making the false statements to Amazon because, among other things,  
11 Defendants knew that Plaintiff sells genuine products.  
12  
13

14 156. Defendants' false statements are not protected by any privilege.  
15  
16

17 157. Defendants acted with actual malice or with reckless disregard for the  
18 truth of the matter contained in Defendants' false statements to Amazon and  
19 Plaintiff's customers.  
20  
21

22 158. False statements that are directed to the honesty, efficiency, or the  
23 business character traits amount to defamation per se.  
24  
25

26 159. Here, Defendants published statements that Plaintiff was engaged in  
27 trademark infringement.  
28

25 160. Plaintiff bought all of its ULTIMAX products from distributors  
26 authorized by Timken to sell products for resale. Those products bore bona fide  
27 marks that were applied with the authority of Timken.  
28

1       161. Plaintiff incurred special harm, including, but not limited to,  
2 suspension from selling Ultimax Products and damage to its relationship with  
3 Amazon and its customers.  
4

5       162. Whether by defamation per se or by special harm, Plaintiff has  
6 suffered injury as Plaintiff's selling privileges related to Ultimax Products have  
7 been suspended and Plaintiff has lost sales of Ultimax Products and many other  
8 products.  
9

10      163. Specifically, on behalf of Timken, Smith submitted an extraordinary  
11 number of false intellectual property infringement reports to Amazon and signed  
12 each report under penalty of perjury.  
13

14      164. These reports specifically targeted Plaintiff.  
15

16      165. Smith was authorized by Timken as its agent to submit reports to  
17 Amazon through Brand Registry directed against SoCal.  
18

19      166. On information and belief, the infringement reports were filed with  
20 Amazon with an intent to harm Plaintiff's business and cause Amazon to suspend  
21 Plaintiff's selling privileges.  
22

23      167. Plaintiff is entitled to damages, costs, and fees as allowed by law.  
24

25      168. Plaintiff has suffered injury and, unless Defendants are enjoined from  
26 such activity, will continue to suffer injury.  
27

1                   **COUNT III – TORTIOUS INTERFERENCE WITH**  
2                   **EXISTING BUSINESS ADVANTAGE**

3                 169. Plaintiff realleges and incorporates previous paragraphs 1-124.

4  
5                 170. Plaintiff has had an advantageous business relationship with Amazon  
6 which allows Plaintiff to sell on Amazon's e-commerce platform as a third-party  
7 seller.

8  
9                 171. Plaintiff is also in a contractual relationship with Amazon.

10                172. At all relevant times, Defendants were aware of Plaintiff's business  
11 relationship with Amazon, as well as Plaintiff's contractual relationship with  
12 Amazon.

13                173. At all relevant times, Defendants were aware of the terms and  
14 conditions of Amazon, as well as the advantageous business relationship that  
15 comes with being an Amazon seller.

16                174. Defendants intentionally and improperly interfered with Plaintiff's  
17 advantageous relationship with Amazon by falsely claiming, with knowledge of  
18 such falsity, to Amazon, that Plaintiff was selling products that infringed Timken's  
19 trademark rights.

20                175. Defendants' conduct directly and proximately caused disruption of  
21 Plaintiff's relationship with Amazon and continues to harm Plaintiff's relationship  
22 with Amazon.

1       176. Defendants intended to cause Amazon to suspend Plaintiff's ability to  
2 sell Ultimax Products on Amazon and therefore interfere with the business  
3 relationship Plaintiff has had with Amazon.

5       177. Defendants had actual knowledge that their actions would cause  
6 Amazon to suspend Plaintiff's ability to sell products on Amazon, including the  
7 Ultimax Products on Amazon.

9       178. Defendants' accusations of infringement, made directly to Amazon  
10 were made for the improper purpose of suppressing competition.

12       179. Defendants' actions interfered with Plaintiff's business relationship  
13 with Amazon and proximately caused Plaintiff's listings of all products, including  
14 those of the Ultimax Products to be suspended.

16       180. Defendants' accusations were false and were made maliciously and  
17 with ill will.

19       181. Defendants continued to submit false reports to Amazon even after  
20 being advised by Plaintiff that the reports were false and Plaintiff requested  
21 support for the allegations.

23       182. Specifically, on behalf of Timken, Smith submitted false intellectual  
24 property infringement reports to Amazon and signed each report under penalty of  
25 perjury.

27       183. These reports specifically targeted Plaintiff.

1       184. The reports to Amazon would not have been possible without the  
2 participation of each of the Defendants. Specifically, Timken provided Smith with  
3 access to, and authority under, the ULTIMAX Registration for purposes of  
4 submitting reports to Amazon through Brand Registry. Timken could have revoked  
5 this right at any time.  
6

8       185. In the relevant time period, Smith was an agent for Timken and acted  
9 under the direction and authority of Timken to interfere with Plaintiff's ability to  
10 sell ULTIMAX Products on Amazon.  
11

12       186. Plaintiff has been damaged by suspension of all of its product listings,  
13 including those for the Ultimax Products, by losing revenue related to those  
14 products and for all other products it was selling during the period of suspension.  
15

16       187. Plaintiff is entitled to damages, costs and attorneys' fees as allowed by  
17 law.  
18

19       188. Plaintiff has suffered injury and, unless Defendants are enjoined from  
20 such activity, will continue to suffer injury.  
21

22                   **COUNT IV - OHIO DECEPTIVE TRADE PRACTICES ACT**  
23                   **(ODTPA § 4165.01 ET SEQ.)**

24       189. Plaintiff realleges and incorporates previous paragraphs 1-124.  
25

26       190. Defendants Timken and Smith violated the Ohio Deceptive Trade  
27 Practices Act ("ODTPA"), R.C. 4165.01, *et seq.*, by, *inter alia*, causing likelihood  
28

of confusion or misunderstanding as to the source, sponsorship, approval, or certification of the products sold by SoCal, or causing likelihood of misunderstanding by Amazon as to affiliation, connection or association of SoCal with or certification by Timken of the products sold by SoCal.

191. Defendant Smith, acting as an agent for Defendant Timken, made a series of false statements or statements that were misleading to Amazon regarding the products sold by SoCal.

192. The statements made by Smith on behalf of Timken actually deceived Amazon or had the tendency to deceive Amazon as the intended target audience.

193. Smith's false statements were material to the actions and decisions made by Amazon in connection with SoCal's selling privileges.

194. As a result of the false statements made to Amazon, SoCal has been  
and continues to be injured as a result.

## **PLAINTIFF'S REQUESTED RELIEF**

WHEREFORE, the Plaintiff prays for judgment as follows:

A. An order declaring that Plaintiff has not infringed any valid and enforceable intellectual property right owned by Timken, including the Ultimax Registration;

B. Permanent injunctive relief restraining Defendants, their agents, servants, employees, successors and assigns, and all others in concert and privity

with Defendants, from filing complaints with Amazon and any other ecommerce platform alleging that the products sold by SoCal infringe any trademark right of Timken;

C. Injunctive relief requiring Defendants to rescind all complaints that they have filed on Amazon against Plaintiff;

D. Injunctive relief requiring Amazon to delete and purge from its systems all complaints that Defendants have filed against Plaintiff, including the effects of those infringement reports on SoCal’s Account Health Rating;

E. An award of all damages that Plaintiff has suffered as a result of Defendants' tortious interference;

F. An award of all damages that Plaintiff has suffered as a result of Defendants' defamation:

G An award of all costs and fees incurred in this Action; and

H Such other and further relief as the Court shall find just and proper

## DEMAND FOR JURY TRIAL

Plaintiff hereby requests a jury trial for all issues triable by jury including, but not limited to, those issues and claims set forth in any amended complaint or consolidated action.

1 DATED: November 29, 2024

For Plaintiff:

2 By: /s/ Andrew C. Stebbins  
3 astebbins@bdblaw.com  
4 BUCKINGHAM, DOOLITTLE &  
5 BURROUGHS, LLC  
6 1375 E. 9th Street, Suite 1700  
7 Cleveland, OH 44114  
8 Telephone: (216) 621-5300  
Facsimile: (216) 621-5440

9 Lance G. Johnson (*Pro Hac Vice to be*  
*filed*)  
10 lance@lgjlegal.com  
11 JOHNSON LEGAL PLLC  
12 12545 White Drive  
13 Fairfax, Virginia 22030  
14 Telephone: (202) 445-2000  
Facsimile: (888) 492-1303

15 Attorneys for Plaintiff,  
16 SOCAL POWERSPORTS, INC.

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